

Message Text

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ORIGIN L-03

INFO OCT-01 AF-06 ARA-06 EA-07 EUR-12 NEA-10 IO-10 ISO-00

DHA-02 OIC-02 DPW-01 SAJ-01 ACDA-05 CIAE-00 DODE-00

PM-04 H-02 INR-07 NSAE-00 NSC-05 PA-01 PRS-01 SP-02

SS-15 USIA-06 /109 R

DRAFTED BY L/OES:RJBETTAUER:MMP

APPROVED BY L:GHALDRICH

DOD/OSD/ISA:DANDERSON

IO/UNP:WEHEWITT

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R 232212Z DEC 75

FM SECSTATE WASHDC

TO AMEMBASSY LONDON

AMEMBASSY BONN

AMEMBASSY OTTAWA

AMEMBASSY PARIS

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E.O. 11652: N/A

TAGS: ICRC, PARM

SUBJECT: INTERNATIONAL HUMANITARIAN LAW

REF: STATE 268285 AND PREVIOUS

DURING NOV 17-18 CONSULTATIONS ON INTERNATIONAL
HUMANITARIAN LAW WE DISCUSSED USG REDRAFT OF ARTICLE 74 BIS
ON REPRISALS. A NUMBER OF COMMENTS WERE MADE ON U.S.
DRAFT, AND WE PROMISED TO REVISE DRAFT IN LIGHT OF COMMENTS.
FOLLOWING TEXT TAKES INTO ACCOUNT COMMENTS AND IS PUT
FORWARD FOR CONSIDERATION BY MEMBERS OF GROUP, BUT AT THIS
POINT DOES NOT RPT NOT REPRESENT FINAL USG POSITION. WE
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WOULD APPRECIATE IT IF YOU WOULD PASS TEXT TO FOLLOWING

PEOPLE, GIVING EXPLANATION AS CONTAINED IN THIS PARAGRAPH:
CANADA - MR. DAVID MILLER; FRG - DR. ANDREAE OR DR. FRICK
AND DR. SCHNEIDER; UK - MR. JOHN FREELAND. WE HAVE ALREADY
GIVEN TEXT TO GENERAL FRICAUD-CHAGNAUD IN WASHINGTON, BUT
REQUEST AMEMBASSY PARIS ALSO TO PROVIDE TEXT TO CHRISTIAN
GIRARD OF QUAL.

BEGIN TEXT: 1. IN ORDER TO INDUCE AN ADVERSE PARTY
TO A CONFLICT TO HALT GRAVE, MANIFEST VIOLATIONS OF THE
CONVENTIONS OR OF THIS PROTOCOL, A PARTY TO A CONFLICT MAY,

SUBJECT TO THE PROVISIONS OF THIS ARTICLE, RESORT TO
CERTAIN MEASURES AGAINST THE ADVERSE PARTY WHICH WOULD
OTHERWISE BE PROHIBITED.

2. THE MEASURES DESCRIBED IN PARAGRAPH 1 OF THIS ARTICLE
MAY ONLY BE TAKEN WHEN THE FOLLOWING CONDITIONS ARE MET:

(A) THE MEASURES MUST BE IN RESPONSE TO GRAVE,
MANIFEST VIOLATIONS OF THE CONVENTIONS OR OF THIS PROTOCOL
BY THE ADVERSE PARTY AND MUST BE INTENDED (SOLELY) TO
INDUCE THAT PARTY TO CEASE SUCH VIOLATIONS;

(B) THE MEASURES MAY BE TAKEN ONLY WHEN OTHER EFFORTS
TO INDUCE THE ADVERSE PARTY TO COMPLY WITH THE LAW HAVE
FAILED OR ARE NOT FEASIBLE;

(C) THE DECISION TO HAVE RECOURSE TO SUCH MEASURES
MUST BE TAKEN AT THE HIGHEST LEVEL OF THE GOVERNMENT OF
THE PARTY ALLEGING THE VIOLATION; AND

(D) THE PARTY RESPONSIBLE FOR THE VIOLATION MUST BE
GIVEN SPECIFIC FORMAL PRIOR WARNING THAT SUCH MEASURES
WILL BE TAKEN IF A PARTICULAR VIOLATION (OCCURS,) IS
CONTINUED, OR IS RENEWED.

3. THE MEANS OF APPLICATION AND THE EXTENT OF THE MEASURE
DESCRIBED IN PARAGRAPH 1 OF THIS ARTICLE SHALL NOT BE
EXCESSIVE IN DEGREE TO THE VIOLATION WHICH THEY ARE
DESIGNED TO END. SUCH MEASURES MUST CEASE, IN ALL EVENTS,
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WHEN THEY HAVE ACHIEVED THEIR OBJECTIVE, NAMELY, CESSATION
OF THE VIOLATIONS WHICH PROMPTED THE MEASURES.

4. THE MEASURES DESCRIBED IN PARAGRAPH 1 OF THIS ARTICLE
MAY NOT BE DIRECTED AGAINST PERSONS WHO ARE (SPECIFICALLY)
PROTECTED FROM SUCH MEASURES BY THE CONVENTIONS OR THIS
PROTOCOL EXCEPT THAT, IF DESPITE THE PROHIBITION IN
PARAGRAPHS 1, 2 AND 3 OF ARTICLE 46 OF THIS PROTOCOL, ONE

PARTY TO THE CONFLICT MAKES THE CIVILIAN POPULATION OR INDIVIDUAL CIVILIANS OF AN ADVERSE PARTY TO THE CONFLICT THE OBJECT OF ATTACK, THEN THE PARTY TO THE CONFLICT WHOSE CIVILIAN POPULATION OR INDIVIDUAL CIVILIANS ARE THE OBJECT OF SUCH ATTACKS MAY, NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH 4 OF ARTICLE 46, TAKE MEASURES IN RESPONSE WHICH WOULD OTHERWISE BE PROHIBITED UNDER THESE PROVISIONS FOR THE SOLE PURPOSE OF INDUCING CESSATION OF SUCH ATTACKS.

5. THE MEASURES DESCRIBED IN PARAGRAPH 1 OF THIS ARTICLE MAY NOT BE DIRECTED AGAINST OBJECTS WHICH ARE (SPECIFICALLY) PROTECTED FROM SUCH MEASURES BY THE CONVENTIONS OR THIS

PROTOCOL EXCEPT THAT, IF DESPITE THE PROHIBITION IN PARAGRAPHS 1 AND 2 OF ARTICLE 47, ONE PARTY TO THE CONFLICT MAKES CIVILIAN OBJECTS OF AN ADVERSE PARTY TO THE CONFLICT THE OBJECT OF ATTACK, THEN THE PARTY TO THE CONFLICT WHOSE CIVILIAN OBJECTS ARE THE OBJECT OF SUCH ATTACKS MAY, NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH 1 OF ARTICLE 47, TAKE MEASURES IN RESPONSE WHICH WOULD OTHERWISE BE PROHIBITED UNDER THESE PROVISIONS FOR THE SOLE PURPOSE OF INDUCING CESSATION OF SUCH ATTACKS. END TEXT. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, INTERNATIONAL LAW, HUMAN RIGHTS
Control Number: n/a
Copy: SINGLE
Draft Date: 23 DEC 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MorefiRH
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE301826
Document Source: CORE
Document Unique ID: 00
Drafter: RJBETTAUER:MMP
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750446-0732
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751218/aaaaapfe.tel
Line Count: 137
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 STATE 268285
Review Action: RELEASED, APPROVED
Review Authority: MorefiRH
Review Comment: n/a
Review Content Flags:
Review Date: 07 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <07 MAY 2003 by BoyleJA>; APPROVED <07 MAY 2003 by MorefiRH>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: INTERNATIONAL HUMANITARIAN LAW
TAGS: PARM, SHUM, US, ICRC
To: LONDON MULTIPLE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006